

**REGULAR STATE CREDIT UNION BOARD MEETING
OFFICE OF THE COMMISSIONER
DEPARTMENT OF FINANCIAL INSTITUTIONS
2000 SCHAFFER STREET, SUITE G
BISMARCK, NORTH DAKOTA**

June 3, 2005

The regular meeting of the State Credit Union Board was called to order by Chairman Karsky in the Office of the Commissioner, Department of Financial Institutions, 2000 Schaffer Street, Suite G, Bismarck, North Dakota, at 9:30 a.m., Friday, June 3, 2005.

MEMBERS PRESENT: Timothy J. Karsky, Chairman *(San Antonio, TX)*
Judy A. Millar, Member
Ervin E. Mund, Member
Melanie Stillwell, Member
Steven S. Tonneson, Member

MEMBERS ABSENT: None

ALSO PRESENT: Robert J. Entringer, Secretary
Jim Laidlaw, Chief Examiner – Credit Unions
Wayne Hatzenbuehler, Financial Institutions Examiner
Corey Krebs, Financial Institutions Examiner
Stuart Higginbotham, First Community Credit Union
Gary Orman, First Community Credit Union
Paul Brucker, Railway Credit Union
Kermit Larson, North Dakota Credit Union League
Dean Rourke, First Community Credit Union
Deb Gallagher, Capital Credit Union
Craig Laub, Rural Electric and Telephone CU
Mark Momerak, Rural Electric and Telephone CU
Greg Tschider, Legal Counsel
Doug Wolf, Midwest Corporate Federal Credit Union
Denton Zubke, Dakota West Credit Union *(Watford City)*

APPROVAL OF MINUTES

Chairman Karsky indicated the Board received copies of the minutes of the regular meeting held on March 11, 2005, and the special meeting held on May 2, 2005. **It was moved by Member Millar, seconded by Member Mund, and unanimously carried to approve the minutes as published.**

APPLICATION BY FIRST COMMUNITY CREDIT UNION, JAMESTOWN, TO MERGE WITH RURAL ELECTRIC AND TELEPHONE CREDIT UNION, BISMARCK

Chairman Karsky stated that the Board may recall the merger application was discussed at the May 2, 2005, meeting. Chairman Karsky apologized to the Board because at that meeting he stepped down as Chairman in order to make a motion, but the motion died for lack of a second. Subsequently, no further action was taken on the application and, as the rules require, the Board needs to either approve or deny the application.

Chairman Karsky asked Assistant Commissioner Entringer to update the Board regarding republishing notice of the application.

Assistant Commissioner Entringer indicated the notice of the application was sent to the main office of every credit union located within a 50 mile radius of Bismarck since Rural Electric and Telephone Credit Union is a closed charter credit union. In addition, Denton Zubke, Dakota West Credit Union, Watford City, was provided a copy of the notice since he was on the May 2, 2005, conference call meeting. Credit unions receiving notice of the application were Capital Credit Union, Bismarck; St. Alexius Community Credit Union, Bismarck; Genie-Watt Credit Union, Bismarck; Glen Ullin Credit Union, Glen Ullin; Flasher Community Credit Union, Flasher; First Community Credit Union, Jamestown; Railway Credit Union, Mandan; New Salem Credit Union, New Salem; Dakota West Credit Union, Watford City; Kintyre Credit Union, Kintyre; and Rural Electric and Telephone Credit Union, Bismarck.

Chairman Karsky noted the Department did receive additional comments from New Salem Credit Union; Paul Brucker, President of Railway Credit Union, Mandan; and Dakota West Credit Union, Watford City.

Assistant Commissioner Entringer indicated the comment letters were also provided to Stuart Higginbotham, Gary Orman, Kermit Larson, and Greg Tschider this morning.

Chairman Karsky indicated he would give the applicant the opportunity to review the application again before the Board, if so desired.

President Higginbotham inquired as to whether that was necessary, and Chairman Karsky stated it was up to them whether they wanted to make comments regarding the additional comment letters the Board had received.

President Higginbotham stated he would have Greg Tschider, Legal Counsel for First Community Credit Union, make comments for the applicant.

Chairman Karsky asked who Mr. Tschider is representing, and Mr. Tschider indicated he is representing both First Community Credit Union and Rural Electric and Telephone Credit Union.

Mr. Tschider indicated the first issue is whether Member Mund would be participating in the discussion on this application and voting. Mr. Tschider stated it is their contention that since Member Mund was one of the proposed merger partners, he has a potential conflict of interest. In addition, a transcript of the discussion at the May 2, 2005, meeting was provided and Member Mund made statements that obviously indicated he cannot maintain a proper ethical attitude about what is happening here, and he made statements that were misrepresentations. Mr. Tschider indicated he has talked to employees of Eide Bailly who were the consultants for Rural Electric and Telephone Credit Union, and Member Mund's statements were wrong. Mr. Tschider stated they believe Member Mund has a blatant conflict of interest and requests he not participate in any manner.

Chairman Karsky asked Member Mund if he would like to make a statement as to his position on abstaining or voting on the application. Member Mund stated he would have no objection to abstaining. Member Mund indicated he is trying to recall the Section of the North Dakota Administrative Code that requires a member to abstain from voting, and whether that refers to a merger situation.

Mr. Tschider read Section 13-03-05-05 of the North Dakota Administrative Code, entitled Prohibitions, which states members of the board who are also directors, committee members, or staff of one of the merging credit unions, shall

declare a conflict of interest and must abstain from voting on the merger application. Mr. Tschider stated he does not feel that is the situation since Member Mund is not a director, an officer, or staff of one of the merging credit unions; therefore, he did not think Section 13-03-05-05 applies.

Member Mund asked Mr. Tschider if he was saying he could abstain from voting, and Mr. Tschider indicated he could.

Member Mund indicated he would have no problem abstaining from voting.

Chairman Karsky asked if there were any comments from other Board members regarding Member Mund abstaining from voting on this application.

Assistant Commissioner Entringer reminded Chairman Karsky of the Supreme Court ruling regarding Board members voting if they are in attendance and that they have a duty to vote, adding if they abstain while present, their vote will be cast with the majority. Chairman Karsky agreed and stated that is how the Board has done things in the past.

Chairman Karsky informed Mr. Tschider if the vote is 4 to 0 in the affirmative or to deny the application, then the vote would be recorded as 5 to 0. Mr. Tschider stated he does not have a problem with that.

Mr. Tschider indicated in reviewing the transcript it appeared there were several issues that troubled the Board. First, whether or not 100% payback of the equity was something the Board feels comfortable with and, second, if paybacks are going to be permitted, what types of limitations are going to be on the timelines. The question and concern for some was if in fact Board members know that a merger possibility is going to occur and there is going to be a payback, all of a sudden someone deposits substantial funds in the credit union so that they can financially benefit from the potential merger. In other words, if the Board member has inside information, they can contact friends, relatives, or even themselves and put a lot of money in the credit union and receive a nice return on the investment. Mr. Tschider indicated he would like to have Mr. Momerak, a member of the Board of Directors of Rural Electric and Telephone Credit Union, discuss this issue and how the Board handled this.

Mr. Momerak indicated the Board of Rural Electric and Telephone Credit Union did discuss the payout of the equity and also talked about the time on which

that payout would be based on. Mr. Momerak indicated the Board had started merger discussions in February/March 2004, and that is when the Board decided to have its date cutoff as December 31, 2003, so prior to any disclosure to the membership that would be the date that would be used. Mr. Momerak indicated not only would the payback be based on the share deposits, but the interest on loans that had accumulated during the year 2003 for loan customers.

Member Tonneson asked Mr. Momerak on what date they had chosen the December 31, 2003, cutoff date. Mr. Momerak indicated it would have been late last year when the Board made that decision. Mr. Momerak indicated it was prior to December 1, 2003, when they notified their members, but without looking at the minutes, he could not recall the exact date. Member Tonneson asked if it was November when the Board of Directors decided on the December 31, 2003, or was it after December 1, 2003, or in January 2004 when the Board made this decision. Mr. Momerak indicated it was before the December meeting. Mr. Momerak indicated the December 31, 2003, date was actually on the ballot when the members voted on it.

Mr. Tschider asked Mr. Momerak when that notice was sent out; did this occur in December 2003 or January 2004. Mr. Momerak indicated it was December 2004 when the Board actually presented the membership vote.

Member Stillwell asked if the equity payback was based on balances, not averages, and Mr. Momerak indicated it was balances.

Mr. Tschider reiterated there was no public knowledge because of the December 31, 2003, date, so no one would have benefited from this.

Member Tonneson asked for clarification that that included the Board of Directors, and Mr. Momerak indicated that was correct.

Mr. Tschider indicated he would like to discuss the second issue, which is the concept of a rebate in the first place. Mr. Tschider indicated he has read both Mr. Brucker's and Mr. Zubke's letters and addressed Mr. Zubke's letter first. Mr. Tschider indicated that Mr. Zubke apparently feels if there is going to be a bidding process it should include every credit union in the land. Mr. Tschider indicated the Board needs to recall that the credit union is owned by the members and the membership has the right to decide who they want as potential merger partners. Mr. Tschider indicated he is not aware of why Rural Electric and Telephone Credit

Union chose those three credit unions, but they were all local credit unions. Mr. Tschider stated to require in the future that a credit union wanting to merge must contact every other credit union in the state is unworkable, unreasonable, and violates the principle that the members own the credit union. The membership should be able to pick and choose who they wish to do business with. Mr. Tschider indicated the concept of this rebate is certainly something new and this issue has never been raised at any national league attorney conferences he has attended. Mr. Tschider indicated it is his sense the Board is not comfortable with the 100% payback; however, we are faced with one major problem which is that there are no rules or regulations to prohibit this. Mr. Tschider indicated at the previous meeting the discussion questioned what is a fair rebate – 50%, 75%, or 100%, adding he does not know what would qualify as a fair rebate. Since there are apparently concerns with this situation, it is the Board's responsibility to come up with rules, regulations, or state law to give guidance to the credit unions as to what the rules are going to be. Mr. Tschider indicated when you start deciding where the line is going to be you must be careful because if, for instance, one of the proposals is a merging credit union can only pay back when they reach the same equity as the surviving credit union, which in theory sounds good; but, in fact effectively excludes the highly capitalized credit unions from attracting any merger partners. Mr. Tschider indicated when the State Credit Union Board is trying to promulgate a rule with regard to this it will be a challenge; however, this issue needs to be addressed. The issue at hand, however, is whether this merger should be permitted and approved. Mr. Tschider indicated this merger should be approved even if the Board does not particularly like it; however, from a legal standpoint there is no prohibition in the law against it. Therefore, Mr. Tschider stated he respectfully requests the Board approve the merger application.

Chairman Karsky asked if there were any other members of First Community Credit Union or Rural Electric and Telephone Credit Union wishing to make comments, and Mr. Tschider indicated no.

Chairman Karsky asked if there were any others in attendance that wished to make comments regarding the application.

President Denton Zubke, Dakota West Credit Union, Watford City, stated he is not concerned with what this Board has done, and added he is not accusing the Board of trying to do anything improper. President Zubke indicated his concern is the issue will permeate the credit union industry across North Dakota and has the potential of permeating the credit union industry across the nation. This issue is

one that could allow certain individuals or groups or individuals to benefit. President Zubke indicated as far as there being nothing in the law that says this application cannot be approved, he added there is also nothing in the law that says it has to be approved. President Zubke indicated the issue is one in which the State Credit Union Board must protect the industry, ensuring that the safety and soundness principals are applied, and making sure that the credit union industry continues. President Zubke indicated if he was a banker and looking at this issue, it would be easy for him to figure out a way to destroy every credit union in the state by simply rallying the members and saying 'your credit union has a 10% equity position and if you have \$10,000 in that credit union and you can get that credit union to merge and the surviving credit union has to pay back the equity, you are going to get \$1,000'. President Zubke indicated this all becomes one huge issue of protecting the credit union industry.

Chairman Karsky asked Paul Brucker, President of Railway Credit Union, Mandan, if he would like to comment. President Brucker indicated his comments are summarized in his letter and at the time he wrote the letter, he did not look at the possibility that Railway Credit Union would be cutting its own throat by the merger of equals, and added that there are several issues here. First, should this merger be approved, and secondly, is there something that should be done to protect the credit union industry because this is setting a precedent. President Brucker indicated there are far reaching ramifications and is there a possibility that this could evolve into a bidding war in the future, and unfortunately he does not have an answer for these questions. President Brucker indicated he does have concerns in the process, particularly because his credit union was excluded more than any other, adding he is not sure what the reason was, and that he concurs with Mr. Tschider in that Rural Electric and Telephone Credit Union is owned by its members and if they did not want to talk to Railway Credit Union, that is their business.

Chairman Karsky asked if anyone else would like to comment on the merger application.

Doug Wolf, President of Midwest Corporate Federal Credit Union, Bismarck, indicated his comment is not directly regarding the application. President Wolf stated he does not have a view as to whether or not the application should or should not be approved, but that his concern is the impression that was given at the May 2, 2005, meeting by not getting a second to Member Karsky's motion would result in the application dying and that there would be no further action. President Wolf indicated his only interest in this process is that as a regulator, the regulator needs to

be consistent and act on these applications. President Wolf indicated the impression given at the last meeting is that this application was denied without any reason given, and his concern is that the regulator needs to be consistent and clear, and when applications are made they either be approved or denied, and that the credit unions involved need to understand how they can proceed. President Wolf indicated his impression that the regulator not acting on an application was bad for the credit unions and bad as the regulator. President Wolf indicated his statement is simply that he wants to make sure the regulator acts as the regulator and either approves or denies all applications.

With there being no further comments, Chairman Karsky stated the Board has before it the application for merger by First Community Credit Union, Jamestown, and Rural Electric and Telephone Credit Union, Bismarck. He stated a motion should be placed on the table, whether it is to approve or deny, and added that simply because you make the motion does not mean you have to vote in favor of the motion. However, before there is discussion, a motion should be placed on the table.

Member Tonneson indicated he has thought about this issue a lot the past month and he has a series of motions he would like to propose; however, before giving a motion he would like to discuss his thought process. Member Tonneson stated he would like to see, as pointed out in several letters and comments, is that several issues be addressed. Member Tonneson indicated the first issue is the application to merge, and last month when the Board discussed this he was surprised there was not precedent set for this type of transaction, either in another state or with the National Credit Union Administration, and he feels we need to deal with this issue. Member Tonneson stated he would first propose that this merger application be approved; second that the Department and Assistant Attorney General Miller research and draft administrative rules dealing with this issue; and third that in the interim between now and when the administrative rules become effective that the Board would move to not approve any more of these requests that would have a payback of equity to members during this time period. Member Tonneson indicated he is also in favor of there being no payback of equity to members, and that this be considered in the administrative rule. Member Tonneson indicated he would also look forward to all the credit unions, not only the ones that express their comments by letter on this application, providing input so that we obtain a rule that is the consensus of the credit union industry.

Member Tonneson moved that the merger application of Rural Electric and Telephone Credit Union, Bismarck, into First Community Credit Union, Jamestown, be approved with the stipulation that the Department of Financial Institutions will approve the method and date to be used in the 100% equity payback to the members of Rural Electric and Telephone Credit Union.

Member Tonneson stated he appreciates Mr. Momerak explaining today how they were going to do that and it seems to make sense that it is going to be something that was after the fact, but added he would feel more comfortable if the Department would make sure that it approves how it is going to be done.

The motion was seconded by Member Stillwell.

Chairman Karsky indicated in the Board's packet there should be an article on mergers that was provided, which is a quarterly newsletter from the NCUA Division of Insurance dated April 6, 2005. Chairman Karsky indicated the article states that occasionally a credit union will propose payment of a merging dividend, which is also known as a bonus, prior to the consummation of a merger. The article states that this should not be a payoff agreed to by the continuing credit union in order to persuade the merging credit union to merge. The article goes on to state that when the dividend is paid it should be paid on balances prior to the date the merging credit union has decided to merge. This would negate the ability of anyone taking advantage of the special dividend by making a large deposit. Chairman Karsky indicated you can see that NCUA has looked at this because it is starting to become an issue, and this is the only guidance the Department has; but added that NCUA would allow this.

Chairman Karsky also noted that on April 26, 2005, the Department received a copy of a letter from Jane Walters, NCUA Regional Director, stating NCUA was going to approve the merger of First Community Credit Union and Rural Electric and Telephone Credit Union per the conditions in her letter.

Chairman Karsky then reviewed Section 13-03-05-04 of the North Dakota Administrative Code, which is titled Considerations for Approval, which requires that the Board shall examine and consider all relevant factors including whether proper notification has been given to all members, unless the membership meeting has been waived by the Board; the comments of the members of each credit union to be merged; if there is more than one potential merger partner, consideration may be given to the credit union with the more similar field of membership or in closer

proximity to the merging credit union; and finally the financial condition of the continuing credit union. Chairman Karsky indicated the criterion that discusses more than one potential merger partner and giving consideration to the credit union with a more similar field of membership or in closer proximity to the merging credit union is followed primarily when a credit union is in danger of failing and the Department is trying to find a merger partner.

Chairman Karsky discussed President Zubke's comments that there is nothing in the law that says the application has to be approved. Chairman Karsky stated when an application is received either he, Assistant Commissioner Entringer, or Chief Examiner Laidlaw will review the application and determine if it meets the criterion that is outlined in either the law or the North Dakota Administrative Code, as it is the Department's responsibility to act on the application.

Chairman Karsky stated he has taken to heart all of the comments the Department has received regarding this application, fully understands the industry's position on where this is going, and the fact that this may cause a precedent. Chairman Karsky stated if everyone feels the same then sometime in the future, as Member Tonneson suggested, rules and regulations will need to be developed on how to handle this type of application.

Chairman Karsky stated his concern is that this application is before the Board at this time, and there is nothing in the law that says the Board can deny based on the 100% payout of the equity.

Member Tonneson inquired if there was any research done to find out if there are any other states that have done this before. Chairman Karsky stated the Department has not found anything indicating this has or has not been done; however, in reference to the April 2005 article he believes this may have been done with a federal credit union. Chairman Karsky added it appears the NCUA does not want to see a bidding war where the continuing credit union encourages the merging credit union to pay the equity out to entice them to merge. Chairman Karsky stated the Department should start the Administrative Rule process; however, whatever percentage is decided will become the automatic floor. Member Tonneson stated that without any research, he feels that floor should be zero. Chairman Karsky indicated when the Administrative Rule process is started the Department will have to get input from the credit unions. Member Tonneson indicated he would look forward to receiving that input from other credit unions, whether or not it is different from his opinion.

Member Stillwell indicated she would have to agree with Member Tonneson and Chairman Karsky, in that there is nothing that says the Board can or cannot approve this application; adding that rules are made because something like this comes up that has not been addressed previously, and this could set a precedent and cause some safety and soundness issues. Member Stillwell stated the Board cannot put First Community Credit Union and Rural Electric and Telephone Credit Union into this equation because it is not there and hopefully it will be there in the future.

Chairman Karsky indicated if the Board passes a rule it will not have any bearing on a federal credit union in North Dakota; therefore, if a federal credit union would decide to merge with another federal credit union it would not come before the State Credit Union Board, adding he believes they could have 100% payoff. Chairman Karsky stated if a state-chartered credit union was merging into a federal credit union, the Board would not act on that application either. Chairman Karsky indicated this rule would only affect a state to state credit union merger. Chairman Karsky stated it would be nice to have the rule, but in talking to other regulators before you can pass a law it would be nice to see the industry discipline itself, and if the industry thinks it is negative these types of situations will not happen if the continuing credit union tells them no. Chairman Karsky stated some of the responsibility on a transaction like this is the industry's problem; the Board looks at it from the safety and soundness aspect, and after the merger whether the surviving credit union is financially sound.

Chairman Karsky asked Assistant Commissioner Entringer to repeat the motion, and stated he is not sure he wants the responsibility to approve the method and date to be used in the 100% equity payback to the members of Rural Electric and Telephone Credit Union or whether that should be a Board responsibility. Member Tonneson indicated his motion would make it the Department's responsibility. Chairman Karsky indicated if the Board wants the approval as far as the date or method it should be the Board that is responsible for approving those items. Chairman Karsky stated he is not sure what the best or most fair way is because by looking at problems in the past, there are problems with paybacks any way you look at it. If December 31, 2003, is the cutoff date, then obviously anyone who has joined the credit union in 2004 will not get any payback, and questioned whether that is right or wrong. Member Tonneson stated today is the first he has heard how the credit union was planning to do this, using the December 31, 2003, balances and the 7% rebate on interest paid. Therefore, from a regulatory standpoint, Member Tonneson stated if we feel that makes sense and there is no

way there could be any preferential treatment or manipulation that would result in approval of the method. Member Tonneson stated initially it was his thought to include the method in the motion, but from what was discussed today he felt that was handled. Member Tonneson agreed there is nothing that says the Board cannot do this, but he would like to have it reviewed and use this as a guideline in the future.

Chairman Karsky stated he is okay with using the December 31, 2003, date, but would like to know if anyone on the Board has a concern with this date.

Assistant Commissioner Entringer indicated he and Chief Examiner Laidlaw have discussed the prospect of the Department going in and reviewing ledger balances to see that no member manipulated his/her share deposit balance prior to the December 31, 2003 date; and with respect to the interest rebate on loans, there really is no way to manipulate that because you cannot go back in time and borrow more money, etc.

Member Tonneson indicated that procedure would be fine with him.

Upon roll call vote the motion was approved, with Members Stillwell, Tonneson, and Karsky voting in favor, Member Mund abstaining, and Member Millar voting no. Therefore, the motion is recorded as approved by a vote of 4 to 1.

Member Tonneson moved that the Department of Financial Institutions, along with Assistant Attorney General Miller, research and draft administrative rules dealing with mergers of credit unions involving the payback of equity to members of the credit union being merged. This draft should be done at the Department's earliest convenience, but no later than the September 2005 regularly scheduled State Credit Union Board meeting. The motion was seconded by Member Mund. The motion was carried by a vote of 5 to 0.

Member Tonneson moved until the administrative rules on payback of equity to members in a merger situation have been approved and become official that the State Credit Union Board will not approve any merger requests that will involve a payback of equity to members. Merger requests that do not involve the payback of equity to members may still be brought to

the State Credit Union Board for consideration. The motion was seconded by Member Millar.

Chairman Karsky indicated that Assistant Attorney General Miller is absent today, and added he is not sure we have the authority to legislate this.

Member Tonneson indicated with Assistant Attorney General Miller absent there are legalities he does not know about, but added that it is his thought that when you have a policy you bring it to the Board of Directors and you may make a motion but do not have the official policy that is drafted, then you bring it back at the next meeting. Member Tonneson stated it is his thought this will put credit unions on notice that until such time as something legal is established, this is the position the Board will take at this time.

Chairman Karsky indicated he will ask Assistant Attorney General Miller as to the legality of this and if it is fine we will go forward, but if not a special meeting will have to be arranged.

Member Tonneson indicated the regulations indicate we have to consider all applications within 30 days and with that being the case, if we would get an application with a buyout in the future, he would like to have on file that the Board can refer back to this motion as to its position, rather than this merger application between First Community Credit Union and Rural Electric and Telephone Credit Union as the standard. Member Tonneson stated he does not feel there is any other way to deal with this legally because of the fact that there are no guidelines at this point.

The motion was approved by a vote of 5 to 0.

At this time Stuart Higginbotham, Gary Orman, Paul Brucker, Dean Rourke, Deb Gallagher, Craig Laub, Mark Momerak, Greg Tschider, and Denton Zubke left the meeting.

TOWN AND COUNTRY CREDIT UNION, MINOT – REQUEST TO EXTEND THE DEADLINE FOR OPENING A BRANCH AT 1727 SOUTH UNIVERSITY DRIVE, FARGO

Assistant Commissioner Entringer indicated the Department received a letter dated May 9, 2005, from President Rodger Denny asking for permission to extend the day of opening for the future branch of Town and Country Credit Union to be located at Meritcare South University at 1727 South University Drive, Fargo, to December 2005. The reason for the request is the hospital is in the process of remodeling and has not begun to work on the prospective area where the branch will be located. President Denny indicated the projected total cost will remain the same as previously submitted with the original branch application.

Member Millar inquired as to whether December 2005 would give the credit union enough time. Member Mund asked when the original approval was granted. Assistant Commissioner Entringer stated approval was as of July 2004.

It was moved by Member Mund, seconded by Member Millar, and carried by a vote of 5 to 0, to grant Town and Country Credit Union, Minot, an extension to June 2006 for the branch to be opened at 1727 South University Drive, Fargo.

STATE-CHARTERED CREDIT UNION ANNUAL ASSESSMENT POLICY

Assistant Commissioner Entringer indicated the Board had been provided a copy of the Memorandum from Joan Becker to Commissioner Karsky dated May 19, 2005, as well as the State-Chartered Credit Union Annual Assessment Policy.

Chairman Karsky indicated the Assessment Policy first began in 1989 and the actual assessment formula never changed until two years ago when the Department hired an additional examiner for the credit union division, therefore the assessment formula was slightly increased. Chairman Karsky stated the Department is proposing to keep the assessment formula the same this year, and it is indicated in the Memorandum where the Department will stand. Chairman Karsky stated the Department feels comfortable running the carryover down to that level.

Assistant Commissioner Entringer indicated the Memorandum shows a projected carryover of \$34,024 as of June 30, 2005, and the revenue for the fiscal

year beginning July 1, 2005, would be \$325,977, which includes \$290,000 from assessments, \$600 from application fees, \$900 from interest income, and salary and operating expenses of \$298,061, which results in a net carryover of \$27,916 as of June 30, 2006.

Chairman Karsky indicated the Department feels very comfortable it can operate with the projected numbers.

Assistant Commissioner Entringer indicated the Board is asked to approve the policy which allocates 10% of the Commissioner, Assistant Commissioner, and Director of Administration salary and benefits; 5% of an Administrative Assistant salary and benefits; 100% of Examiner salaries and benefits; operating expenses attributable to credit union supervision, and 5% for equipment. Assistant Commissioner Entringer indicated that no credit union which commenced operation within the previous 12 months would have to pay an assessment and that is not an issue.

It was moved by Member Millar and seconded by Member Stillwell to approve the State-Chartered Credit Union Annual Assessment Policy.

Member Mund inquired if there was a deficiency could the Department go to the Industrial Commission to get the deficiency covered. Chairman Karsky stated the Department could go to the Emergency Commission to ask for an increase in the appropriation.

Chairman Karsky stated one issue that could result as a problem for the Department is the cost for motor pool cars, as based on what our budgeted figures were and the current price for gas we are approximately 28¢ behind already. Therefore, this issue could surface in the second year of the biennium.

Member Tonneson inquired as to whether we include in the projection the possibility of credit union mergers, and Chairman Karsky indicated we generally do not include much money for application fees; therefore, those fees are looked at as a bonus. Assistant Commissioner Entringer added if two credit unions merge it could reduce the assessment because the formula is a graduated declining scale. Chairman Karsky also pointed out the examiners will not have to travel to additional offices so the expenses should also be reduced.

The motion carried by a vote of 5 to 0.

PROPOSED ADMINISTRATIVE RULES

Chairman Karsky indicated the Board should have the packet of proposed administrative rules which we had hoped to bring before the Board sooner, as the document is quite lengthy. Chairman Karsky indicated Chief Examiner Laidlaw has gone through the entire North Dakota Administrative Code and found there are quite a few items the State Credit Union Board needs to address, as powers and activities of state-chartered credit unions because either the law was silent as far as the activity or needs to be updated. Chairman Karsky indicated if the Board would decide to go through with the administrative rule process we would have to schedule a hearing and publish in advance of that hearing the notice of proposed rule in the newspapers throughout North Dakota, which allows opportunity for comment, either written or oral, and after the hearing there is an additional comment period at which point we would then finalize the rules, submit them to the Attorney General's Office for approval and then to Legislative Council for final publication.

The following are concerns the Board noted during the review of the proposed administrative rules:

- Chapter 13-03-06, Credit Union Reserve Funds – may need to define net worth in the proposed rule.
- Chapter 13-03-05, Mergers – will need to draft rules as proposed by Member Tonneson on equity payback.
- Chapter 13-03-15, Field of Membership – will need to draft rules for Senate Bill 2263.
- Chapter 13-03-20, Participation Loans – Section 13-03-20-02(1)(a) – Member Mund questioned limiting to 10 percent of the state-chartered credit unions net worth. Chief Examiner Laidlaw indicated you cannot go above NCUA's limitation. Member Stillwell pointed out NCUA limits to 10% of unimpaired capital and surplus. Member Stillwell thought we should go to 3% of assets, in the aggregate. Chief Examiner Laidlaw indicated he would investigate the difference between net worth and unimpaired capital and surplus.

- Chapter 13-03-21, Purchase, Sale and Pledge of Eligible Obligations – Member Mund pointed out Section 13-03-21-02(5) limits indebtedness to 10% of unimpaired capital and surplus. Member Mund was concerned with Section 13-03-21-02(1)(a)(iv) which requires a pool of real estate loans must be sold promptly. The concern is that it may take a certain volume before you can sell to secondary market. This requirement could affect several credit unions that are active in real estate lending. Member Mund stated the rule may need to define “promptly”. Chief Examiner Laidlaw indicated he would take a look at this before coming back to the Board.

The Board recessed from 11:20 a.m. to 11:28 a.m.

- Chapter 13-03-22, Investment Activities – Member Mund was concerned with the definition of Real Estate Mortgage Investment conduit and thought that NCUA rules limited investment in CMOs to certain branches. Chief Examiner Laidlaw indicated that was not in the NCUA rules and regulations. Member Mund was concerned that allowing credit unions to invest in CMOs could result in problems due to their complexity. Chief Examiner Laidlaw discussed the permissible investments which he did not include. Member Mund indicated he agreed with all of the excluded investments except Bankers Acceptances. Chief Examiner Laidlaw stated the credit union could apply for this authority under Section 13-03-22-15.

Chairman Karsky left the meeting at 11:58 a.m., and the Board went into closed session at 11:58 a.m.

Timothy J. Karsky, Chairman

Robert J. Entringer, Secretary